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10/575,179	01/16/2007	Atsushi Maeda	289402US2PCT	6734

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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LEE, DOUGLAS S

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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1940 DUKE STREET  
ALEXANDRIA VA 22314

In re Application of:  
MAEDA, ATSUSHI  
Application No. 10/575,179  
Filed: April 10, 2006  
For: DISPLAY APPARATUS FOR  
CONVEYOR

DECISION ON PETITION  
UNDER 37 CFR 1.181 TO  
INVOKE SUPERVISORY  
REVIEW

This is a decision on the petition filed February 17, 2009 under 37 CFR 1.181 to request consideration of the Information Disclosure Statement filed on December 16, 2008.

**RECENT PROSECUTION BACKGROUND**

November 17, 2008	-Notice of Allowability mailed.
December 16, 2008	-Information Disclosure Statement filed.
February 17, 2009	- Petition filed under 37 C.F. R. 1.181(a) and Issue Fee paid.

**RELIEF REQUESTED**

Petitioner filed the instant petition on February 17, 2009 requesting the Information Disclosure Statement of December 16, 2008 be considered.

Petitioner argues the following outstanding issues:

- (1) The Information Disclosure Statement conforms to the requirements of 37 CFR 1.97-1.98.
- (2) Copies of the Chinese Office Action and Document (AO) with English translations were also submitted with the IDS filed on December 16, 2008.

Petitioner requests the Information Disclosure Statement of December 16, 2008 be considered.

## ANALYSIS

The relevant sections of the MPEP concerning consideration of Information Disclosure Statements are MPEP §609 and 37 CFR 1.97 and 1.98.

### **MPEP §609 states in part:**

III. INFORMATION DISCLOSURE STATEMENT FILED AFTER MAILING OF FINAL ACTION, NOTICE OF ALLOWANCE, OR AN *EX PARTE QUAYLE* ACTION (37 CFR 1.97(c)) BUT PRIOR TO PAYMENT OF ISSUE FEE (37 CFR 1.97(d))

An information disclosure statement will be considered by the examiner if filed on or after the mailing date of any of the following: a final action under 37 CFR 1.113; a notice of allowance under 37 CFR 1.311; or an action that closes prosecution in the application, e.g., an *Ex parte Quayle* action, but before or simultaneous with payment of the issue fee, provided the statement is accompanied by:

- (A) a statement as specified in 37 CFR 1.97(e) (see the discussion in subsection V; and
- (B) the fee set forth in 37 CFR 1.17(p).

These requirements are appropriate in view of the late stage of prosecution when the information is being submitted, i.e., after the examiner has reached a final determination on the patentability of the claims presented for examination. Payment of the fee ( 37 CFR 1.17(p)) and submission of the appropriate statement (37 CFR 1.97(e)) are the essential elements for having information considered at this advanced stage of prosecution, assuming the content requirements of 37 CFR 1.98 are satisfied.

See MPEP 609.04(b) Timing Requirements for an IDS.

### **37 CFR 1.97 states in part:**

(a) In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, the information disclosure statement must satisfy one of paragraphs (b), (c), or (d) of this section.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of:

- (1) The statement specified in paragraph (e) of this section; or
- (2) The fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:

(1) The statement specified in paragraph (e) of this section; and

(2) The fee set forth in § 1.17(p).

(e) A statement under this section must state either:

(1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

**37 CFR 1.98 states in part:**

(a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

(1) A list of all patents, publications, applications, or other information submitted for consideration by the Office. U.S. patents and U.S. patent application publications must be listed in a section separately from citations of other documents. Each page of the list must include:

(i) The application number of the application in which the information disclosure statement is being submitted;

(ii) A column that provides a space, next to each document to be considered, for the examiner's initials; and

(iii) A heading that clearly indicates that the list is an information disclosure statement.

(2) A legible copy of:

(i) Each foreign patent;

(3)

(i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein.

(ii) A copy of the translation if a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).

(b)

(4) Each foreign patent or published foreign patent application listed in an information disclosure statement must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application.

The question to be addressed is whether the Information Disclosure Statement of December 16, 2008 should be considered by the Examiner.

A review of the record reveals that the Information Disclosure Statement was filed before payment of the issue fee and was accompanied by: (1) The statement specified in paragraph (e) of 37 CFR 1.97 and (2) The fee set forth in § 1.17(p) as required by MPEP 609 and 37 CFR 1.97.

Further, in accordance with MPEP 609 and 37 CFR 1.98, the Petitioner provided a legible copy of the foreign patent, a concise explanation of the relevance of the patent, a copy of the translation of a non-English-language document, or portion thereof, and an identification of each foreign patent or published foreign patent application by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application.

Therefore, the Information Disclosure Statement meets all the requirements of 37 CFR 1.97 and 1.98.

Accordingly the petition to have the Examiner consider the Information Disclosure Statement of December 16, 2008 is **GRANTED**.

The application is being forwarded to examiner for consideration of the Information Disclosure Statement of December 16, 2008. From there, the application will be forwarded to Publications Branch to complete preparation for issue.

Any questions regarding this decision should be directed to the undersigned at (571)272-3719.



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Kakali Chaki, Quality Assurance Specialist  
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